

(28)

**THE  
S U B S T A N C E  
O F T H E  
Archbishop of YORK's Speech  
in the House of Lords  
ON THE  
I M P E A C H M E N T**

O F T H E  
**Earl of STRAFFEQUED**

My LORDS,

**S**OME Objections having been made to the Bishops voting in Cases of Blood, I shall endeavour to place that Argument in a just Light, and to vindicate the Practice both from the Nature of the Thing, and Examples of this kind in other Nations, and from the Constitution of our own Government, and Precedents among our selves.

It is impossible it shou'd in it self be necessarily evil; for a Bishop to hear the Merits of a Cause debated, in order to give Judgment as the Right shall appear to lie on either side, and to concur in a Sentence of Condemnation, if the Person accus'd shall be prov'd to deserve it, is no more than to vote for the Performance of Justice. And the Practice is so agreeable to the Reason of Mankind, that it prevail'd in the earliest Times, when the eldest Son of every Family was at once King, Priest and Prophet. It was in use also under the Law of Moses, and continu'd among the Priests and Levites till the Destruction of Jerusalem: and in the History of the *Acts* we find the Priests frequently exerting this Authority, in the Punishments they caus'd to be inflicted upon the Apostles. Nor is there one Text in the whole Scripture which forbids the Clergy more than the Laity to use this sort of Judicature.

I shall now represent the Custom of our own Nation in this Affair; in which I shall be the more particular, because the Question will be best decided by this.

Before the Arrival of the *Romans*, the *Druuids*, who were the ancient Priests of *Britain*, gave Sentence in all Causes of Blood: and there is no reason to imagine the *Romans* afterwards depriv'd them of this Jurisdiction, since they allow'd their own Priests to exercise it; or that Christianity, when it was introduc'd here, excluded the Bishops from acting in Temporal Affairs, and possessing Civil Authority and Powers: for King *Lucius*, in whose Reign the Christian Religion is said to be first profess'd in *Britain*, was directed by his Council to extract his Laws, for the Regulation of his Kingdom, both from the Old Testament and the New, which in that Age cou'd never have been done without the Help of the Bishops. And *Howel Dha*, in his Ecclesiastical Laws publish'd by Sir *Henry Spelman*, informs us, the chief Prelates were wholly employ'd in such Transactions. King *Ethelstan*, who liv'd not long before *Howel Dha*, says absolutely, in the second Chapter of his Laws Ecclesiastical, *Hinc debent Episcopi cum seculi Judicibus interesse Judiciis; The Bishops ought to be present at giving Judgment with the Secular Judges.* And it appears by the *Saxo-Danish* Laws publish'd by *Lambert* 1568. that thro the whole Reign of the *Danes* and *Saxons* they always join'd with the Temporal Lords in Judicial Acts and Laws.

It continu'd thus also in the Reign of *Henry I.* after which this Privilege of the Bishops began to be something restrain'd; for in the Parliament held at *Clarendon*, *Henry II.* caus'd a general Record to be drawn of the Customs and Liberties of this Kingdom ever since his Grandfather *Henry I.* among which this was inserted as one: *Archbishops and Bishops, and all other Persons of this Kingdom, who hold of the King in Capite, are to enjoy their Possessions of the King as a Barony; and by reason thereof are to answer before the Judges and Officers of the King; and to observe and perform all the King's Customs; and just as the rest of the Barons ought (for it was a Duty requir'd of them, as the King now by his Summons doth from us) to be present in the Judgments of the King's Courts, together with the rest of the Barons, until such time as they shall there proceed to the Mangling of Members, or Sentence of Death.*

*Matthew Paris* indeed reads the Close of this Article thus: *Till they are come to the Mangling of Members, or to the Sentence of Death;* which may be wrested to signify the beginning to enter upon that part of the Process: but *Quadrilogus*, a Book written in the same Age, and the Original Copy of the Articles which *Becket* sent to *Rome*, and which is now extant in the *Vatican*, have it, *Till they are come in Judgment to the Mangling of Members, &c.* which permits the Bishops to be present till the Sentence came to be pronounc'd. And in the Fifteenth Year of *Henry II.* the Lay Peers were so far from requiring the Bishops to withdraw, that they endeavour'd to oblige them alone to determine a Case of High Treason in the Affair of *Becket*, as *Fitz-Stephens* tells us, who was *Becket's* Chaplain and Follower; his Words are: "The Barons say, you Bishops ought to pronounce Sentence upon your selves; we are Laicks, you are Churchmen, as *Becket* is; you are his Fellow-Priests and Fellow-Bishops." To which one of the Bishops reply'd; "This belongs

" longs to you, my Lords, rather than to us ; for this is no Ecclesiastical but  
 " a Secular Judicature : We sit not here as Bishops, but as Barons : Nos  
 " Barones, & vos Barones ; hic Pares sumus : We are Barons, and ye  
 " are Barons ; and in this Place we are Peers or Equals. And it is in  
 " vain to labour to find a difference in our Order or Calling."

Thus stood the Custom till the Twenty First of Henry II. when the Provincial Synod was held at Westminster by the Archbishop of Canterbury, and some few of his Suffragans, which *Hoveden* mentions in his History, and *Gerardus Dorobernenensis*, as I am told, for I never saw his Manuscript. 'Tis a Citation from this *Gerard*, which principally gave Rise to the Question in hand ; Mr. *Selden* in his Collection of Privileges having quoted from him this Canon, *It is not lawful for such as are constituted in Holy Orders, Judicium Sanguinis agitare, to put in execution Judgment of Blood ; and therefore we forbid they shall either in their own Persons execute any such Mutilation of Members, or sentence them to be so acted by others : And if any Person shall do any such Thing, he shall be depriv'd of his Office and Place of his Order and Function. We do likewise forbid, under the Peril of Excommunication, that any Priest be a Secular Sheriff or Provost.*

But this Canon was taken from *Gratian's Decrees*, and was neither made in *England*, nor confirm'd by Common Law, nor even assented to by all the Bishops of the Province of Canterbury, and by no one of that of *Tork*. It was fram'd originally by the obscure Council of *Toledo* ; and tho the Canon Law stood thus in *Spain*, yet it obtain'd no where else in *Christendom*. The first who promoted these Canonical Inhibitions, was Pope *Gregory VII.* in the Time of *William the Conqueror*. He had several furious Disputes with the Emperor, *Henry IV.* and to weaken the Emperor, and aggrandize his own Power, he apply'd himself, under a pretence of Ecclesiastical Immunities, to draw off the Bishops and great Prelates from serving their Prince in Peace and War, and in the Civil Courts, to which they were oblig'd by their Fiefs and Baronies ; thereby dividing them from their Lay-Sovereigns and Liege-Lords, and making them depend entirely on himself. *Gregory's Successors* very zealously pursu'd the same Design. Accordingly we find the Bishops of this Island before the Conquest still joining with the Thanes, Aldermen and Lay-Lords, in making and executing all Laws whatsoever, concerning the Deprivation of Life and Mutilation of Members. But as soon as the *Norman* and *English* Prelates began to traffick with *Rome*, and to import hither the Canons she most applauded ; they withdrew themselves by degrees from these Employments, and from their Dependence on the King, and erected an Ecclesiastical State and Monarchy, subject only to the Pope. Hence sprung those violent Contentions between King *Rufus* and *Anselm*, and between *Henry II.* and *Becket*, upon whom King *Henry* press'd the antient Customs of the Land, that the Prelates ought to be present in the King's Courts, &c.

Archbishop *Langton*, who first introduc'd here the Canon of the *Toledo Council* mention'd before, was the Pope's own Creature, as his Holiness himself stil'd him in his Bull, and was thrust by him into the See of *Canterbury* by a Papal Provision, where he continu'd in Rebellion against his Prince as long as King *John* liv'd. This Prelate ordain'd also, *Ne quis Clericus beneficiatus vel in sacris Ordinibus constitutus,*

*stitutus, prasumat interesse, ubi Iudicium Sanguinis tractatur vel exercetur: Let no benefic'd Clerk, or one constituted in Holy Orders, presume to act where a Judgment of Blood is handled or exercis'd.*

I will cut the Matter short, and return a full Answer to this and any other Canons or Church-Injunctions of the like nature, at once. The King's Writ or Summons, which calls the Lords Spiritual to Parliament with the Temporal Peers, to join in all Consultations, without any Exception of Causes of Blood, supersedes them all. For the Writ is not merely a Dispensation, but is also a Mandate; and Bishops have been fin'd in the King's Bench for absenting themselves from Parliament without Licence obtain'd from the King. And as these Canons are directly against the King's Prerogative, they are abolish'd by 25 Henry VIII. And long before, it was declar'd at Clarendon to be his Majesty's Prerogative, that all Ecclesiastical Peers who hold of him by Barony, should assist in the King's Judicature till the actual pronouncing a Sentence of Blood. And this holds from Henry I. down to Queen Elizabeth, who employ'd Archbishop Whitgift as a Commissioner upon the Life of the Earl of Essex. In a word, all the great Civilians and Judges of the Land declar'd positively in the Case of Archbishop Abbot, *That all Irregularities introduc'd by Canons upon Ecclesiastical Persons, concerning Matters of Blood, were taken away by the Reformation, and were repugnant to the Statute 25 Henry VIII. as restraining the King's most just Prerogative to employ his own Subjects in such Functions and Offices as his Predecessors had done, and to allow them those Privileges as by the Laws and Customs of this Realm they had formerly enjoy'd.*

There is an Objection founded upon two or three Protests enter'd by Bishops in the Records of the House of Peers, and from some few Passages in Law-Books. The Protest principally insisted on is that of Courtney Archbishop of Canterbury under Richard II. in Mr. Selden's Book of Privileges: in which are these words; *Because in this present Parliament certain Matters are agitated, whereat it is not lawful for us, according to the Prescript of Holy Canons, to be present; and these Matters are such in which nec possumus nec debemus interesse, at which we neither can nor ought to be present.* But as no Record nor History mentions the Bishops protesting or offering to withdraw in Causes of Blood, unless in the unsteady Reign of Richard II. so to prove that before Richard II. the Bishops actually voted in Causes of Treason, and sometimes to Blood, I refer to what I cited from Mr. Selden concerning Becket. Archbishop Stratford also was acquitted of High Treason in Parliament by four Prelates, four Earls, and four Barons, under Edward III. and Roger de Mortimer, Beresford, Travers, and others were adjudg'd Traitors by Bishops as well as other Peers. But I refer in particular to the Roll of 21 Richard II. N° 10. which asserts, that *Judgments and Ordinances in the time of that King's Progenitors had been avoided by the Absence of the Clergy; which makes the Commons there to pray, that the Prelates would make a Procurator, by whom they might in all Judgments of Blood be at least legally, if they durst not be bodily present in such Judicatures.*

As to the Practice since Richard II. in Henry IV's Reign, the Commons thank the Lords Spiritual and Temporal for their good and rightful Judgment, in freeing the Earl of Northumberland from Treason.

Treason. Under *Henry V.* they pray a Confirmation of the Judgment given upon the Earl of *Cambridge* by the Lords Spiritual and Temporal. Sir *John Oldcastle* also was attainted of Treason and Heresy by the Lords Spiritual and Temporal. And in the Reign of *Henry VI.* the Duke of *Suffolk* is charg'd with Treason before the Lords Spiritual and Temporal; and so was the Earl of *Devon*. And there are Precedents of the same down to the Earl of *Bristol's Case* in 1626. when ten Bishops were join'd with ten Earls and ten Barons, in the Disquisition of that suppos'd Treason. I leave it, therefore to any impartial Judgment, whether Protestations made only in one Reign can void a Right grounded on a continual Practice since the Conquest.

Besides, a Protest dies with the Person who made it, and is in the nature of it, as the Civilians will inform us, only a Declaration of our Opinion, in order to obtain or preserve our Right, or to prevent a Damage. For no Man in his Wits will make a Protest to destroy his own Right, and much less another's. Thus in *Courtney's Protest* (which in truth proceeded from Fear of the Pope's Censures for breaking his Canons, a Transgression of them being punish'd more severely by *Rome* than the Violation of the Laws of God) the Prelates declare against any Loss of their Rights as Peers to sit and vote in Parliament.

Before I conclude, I will say something to another Objection, tho I think there is very little Weight in it: It is said, That many worthy Fathers of our Church since the Reformation, and Bishop Andrews among them, did forbear to vote in Causes of Blood, and so voluntarily retir'd out of the House if such things came in question, and did not offer to enter any Protest. I make no doubt but they had a pious Intention in it, tho they did not thorowly consider the Consequences of the Action: the chief Reason they went upon, was, as I have heard, the Records and Statute of *Richard II.* That it is the Honesty of that Calling not to intermeddle in Matters of Blood. Now the French word *Honesty* signifies Decency; as if it were butcherly and foul to be a Judg, or to do Justice on a Malefactor by Death or Loss of Members. But this is an imaginary Decency, never known in Nature or Scripture, but was begotten by Tradition in the dark Fogs and Mists of Popery. And thus it was Honesty in the Clergy to have a shaven Crown, to depend on the Pope, to plead Exemptions, and to refuse to answer for Felonies in the King's Courts: All these were in those Days esteem'd the Honesty of the Clergy. And thus in the loose Reign of *Richard II.* it was Honesty in the Prelates of *England* to absent themselves at pleasure from the Assembly of the Estates, contrary to the King's Command by the Writ of Summons, and to the Dury of their Places as Peers of Parliament; yet they had so much Reflection with them, as not to withdraw before their Protest was admitted, and suffer'd to be enter'd on the Parliament-Roll, by the King and both the Houses. But those excellent Men, now with God, were guided by Scruples quite of another kind: They never question'd the Legality or Decency of an Ecclesiastical Peer's voting in a Judgment of Blood; they did it every day, in passing Appeals and Attainders in Parliament: but as this was not the Practice in other parts of the Christian Church, they chose to avoid a thing which might give Scandal to other

other Nations: and since there were Judges enough beside them in the High Court of Parliament, they thought they might forbear voting, without Prejudice to their King and Country; and the rather, because all our Bishops in *England* being Divines and Preachers of the Gospel, it seem'd more suitable to their Profession to be employ'd in Acts of Mercy than of Judgment. Let the Piety then, and the good Meaning of those grave Fathers be prais'd; but, I say, they forgot their Duty to the King's Writ of Summons, and the Use and Importance of their Place. And now to close the whole, I protest without vaunting, I cannot perceive how what I have here advanc'd can be disprov'd. *Vid. Abp. Williams's Life, p. 153, &c.*

## L O N D O N,

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